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IN THE

Supreme Court of the United States

October Term, 1952

No. 447

GEORGE EARL TOOLSON, *Petitioner*

vs.

NEW YORK YANKEES, INC., *et al, Respondents*

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit and Brief in Support Thereof.

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NEW YORK YANKEES, INC., *et al, Respondents*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

To the Honorable Fred M. Vinson, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States.

Your petitioner respectfully shows:

I.

Statement of the Matter Involved

The sole question presented to this Court is whether professional baseball is subject to the Federal Anti-Trust Statutes in the United States.

The petitioner, the plaintiff, makes the following allegations in his complaint.

He is a highly skilled professional baseball player. (R-4) The defendants are engaged in the business of producing professional baseball games to the general public. The exhibitions are produced by the various

professional clubs, consisting of teams of highly skilled players, such as the petitioner, who are under contract for their services to the Club owning and operating that team, playing games against each other. (R-6) In addition to charging the general public a fee to witness the games, the various clubs enter into remunerative contracts by which they cooperate with radio broadcasting and television companies in producing and transmitting the exhibition, by means of radio narration and television pictures, to the outside public situated in the various states of the United States. Radio narration and televising of the games constitute a substantial portion of the business of professional baseball. (R-8).

To facilitate the business of professional baseball, all of the clubs or teams are organized into leagues. Each team then confines its games to those with the other teams of its league. Sixteen of the teams are organized into two leagues of eight teams each, which leagues are called the major leagues. These leagues are the Defendants National League of Professional Baseball Clubs and the American League of Professional Baseball Clubs. The Defendant, New York Yankees, is a member club of the latter league. All the other teams in professional baseball are organized into leagues, which leagues are designated the minor leagues. Every Minor League is a member of the Defendant National Association of Professional Baseball Leagues. The Defendants, Hollywood Baseball Association and Los Angeles Baseball Club are members of the Defendant Pacific Coast League of Professional Baseball Clubs, which is a member of the Defendant National Association of Professional Baseball Leagues. (R-6-7).

Petitioner alleges in three separate causes of action that the defendants are in violation of the Sherman Act. 26 Stat. 209. The first cause of action alleges that the defendants have entered into or agreed to be bound by a contract in restraint of interstate commerce. (R-9) The second cause of action alleges that the defendants have entered into a combination and conspiracy in restraint of interstate commerce. (R-12) The third cause of action alleges that the defendants have combined together to monopolize professional baseball in the United States. (R-13).

The facts of these alleged violations of the Anti-Trust statutes are practically common to all three causes of action. Petitioner asserts that the defendants have agreed Major League player-club contracts must be uniform and the Minor League player-club contract must be uniform, and that each players contract provides that it shall inure to the benefit of the clubs assignee; that the club or its assignee shall have an option at the end of each year to renew the player's contract and that the player shall not play for any other club but the club which he has a contract or the assignee thereof; that before a certain date each year, each club shall designate a reserve list of active and eligible players which it desires to reserve for the ensuing year, and that no player on such a reserve list shall thereafter be eligible to play for any other club until his contract has been assigned to that club or until he has been released; that the player shall be bound by any assignment of his contract, and that his remuneration shall be the same as that usually paid by the assignee club to other players of like ability; that any player who violates this contract or reservation, or who participates in

a game with or against a club containing an ineligible player shall be considered ineligible and placed on the ineligible list; that an ineligible player must be reinstated before he can be released from his contract; that no club shall tender contracts to ineligible players, and that no club may release unconditionally an ineligible player unless he is first reinstated from the ineligible list. (R-9-10).

In addition it is alleged that the Defendants have agreed, that only certain cities shall constitute the circuits of the Major Leagues; that the circuits established shall remain unchanged unless approved by a majority of the clubs in that league; and that the circuits of either Major League may not be changed without unanimous consent of the clubs of that league. As to radio and television Defendants have further agreed that each Major League may broadcast or telecast its games from a station in its home territory; that no Major League club shall authorize a broadcast or telecast of any of its games from a station outside its home territory and within the home territory of any other baseball club, without the consent of such other clubs. As additional control of the player the Defendants have further agreed that no player shall participate in any exhibition games with or against any team which, during the current season or within one year, which has had any ineligible player or which is, or has been during the current season or within one year, been managed and controlled by an ineligible player or by any person who is listed as an ineligible player under an assumed name or who has otherwise violated, or attempted to violate any exhibition game contract; that no club controlling its park shall allow its park to be used for

any game involving violation of the said contract and agreement; that all contracts made by a club for the use of its facilities or games shall stipulate that the teams participating in such games shall not use any ineligible players. (R-13-15).

With regard to the minor leagues, the Defendants have agreed that the existing circuits of the minor leagues shall not be so changed as to include any city in the Major Leagues without the written consent of the league concerned; that certain indebtedness of each Club shall become liens against the territory that club represents and a league membership shall not be extended to any Club in said city until such debts are discharged; that each league shall have control of its territory until its membership is terminated; that territorial protection of each member club shall cover the entire area within 10 miles in all directions from the city limits of the protected city; that no club or league party to this agreement nor any player under control of such club shall be allowed to play or participate in any games within the territorial limits of any other club member of any other league party franchise operating in said territory and without the consent of the president and directors of the league of which said protected club is a member, nor shall an additional franchise within such protected territory be granted without such consent; that each club may broadcast or telecast from stations located within its home territory but not otherwise and the visiting club may with the consent of the home club, broadcast or telecast to its home territory from stations within its home territory; that the word home territory shall mean and include, with respect to any baseball club, the territory included within the circum-

ference of a circle having a radius of 50 miles with its center at the baseball park of such baseball club; that the protection given territorial rights of each club, as hereinafter set forth, shall be deemed to include protection against broadcasts and telecasts other than those disseminated by a station in the home territory of the other clubs; that no player shall be permitted to play baseball during the playing season of the Club to which he is under contract or reservation in any tournament or game not under the supervision of the National Association of Professional Baseball Leagues. (R-15-18).

The said agreement further provided that any club, party to or identified with this agreement, which shall enter into any negotiation to become a member of, or in any way cooperate with, any organization of professional baseball clubs whose existence will in any manner conflict with the letter and spirit of this agreement, or the interests of any of the clubs operating under it, shall thereby automatically forfeit all rights and privileges conferred by this agreement, including membership in any league party to this agreement, and all right to hold and/or reserve players' contracts. (R-18).

Plaintiff asserts further in his second cause of action, that the Defendants and those combined with them in said illegal combination have acted in full accord and fidelity with the terms of the agreement set forth heretofore; that by reason of the combination thereunder the Defendants, and those combined with them said illegal combination, control and own all of the players in professional baseball, and control all of the teams in Professional Baseball and control all the games and exhibitions thereof, including exhibition by radio and television

among the several states of the United States; that as a result of said combination the Defendant baseball clubs and those combined with them refuse to authorize a radio broadcast of such games to be made from the radio stations located outside the home territory of that club and within the home territory of another club, during the time that such other club is playing a home game, unless such other club has prior thereto consented to the broadcasts of said game or of any game of another club of a comparable league, during said time from a station located within its home territory; that as a result of said combination Defendant Baseball Clubs and those combined with them have refused to authorize a telecast of the games of such clubs to be made from a station located outside of the home territory within the home territory of another club, during the time that (a) a home game of such other club is being played or (b) an away from home game is being telecast from any television station or stations located within the home territory of such club, unless such other club has prior thereto consented to the telecast of said games or of any game of another club in a comparable league, during said time from a station located within its home territory; that within said combination the words home territory mean and include, with respect to any baseball club, the territory fifty miles, with its center at the baseball park of such baseball club. (R-36-38)

Plaintiff claims that, as a result of such combination, the Defendants, and those combined with them, have greatly lessened and eliminated all competition in the exhibition of baseball games by means of broadcasting and televising among the several states; that the place, time, quality

of games exhibited, area within which said exhibit is to be sent has been and are strictly controlled by Defendants and by those combined with them in said illegal combination; by reason of the foregoing Defendants and those combined with them have illegally restrained interstate commerce in the exhibition of baseball games, that competition therein in greatly lessened and destroyed and an illegal monopoly has been established all in violation of the antitrust laws of the United States. (R-38) (R-40).

The Defendant New York Yankees, Inc., owned and controlled both the Defendant Newark International Baseball Club, Inc., and the Defendant Binghamton Exhibition Company, Inc. (R-6) Plaintiff was under contract to the Defendant Newark International Baseball Club, Inc., which was a class AAA Club, and that club asigned his contract to the Defendant Binghamton Exhibition Company, Inc., a class A team. The Plaintiff refused to report to said assignee and the Defendant George M. Trautman, President of the Defandant National Association, of Professional Baseball Leagues, placed him on the ineligible list where Plaintiff was, and still is held. (R-11) By reason of Plaintiff being on said list the Defendant and each of them have refused since May 25, 1950, to allow the Plaintiff to play professional baseball. (R-11).

By reason of being placed on the ineligible list and the consequent refusal of the Defendants to allow the petitioner to play professional baseball, petitioner has been deprived of his means of livelihood. (R-11-13-19) Having thus been injured in his business by activities forbidden by the antitrust laws, petitioner, under the provisions of Section 4 of the Clayton Act, 38 Stat. 731, Section 4,

15, on May 1, 1951, brought this action for treble damages in the United States District Court, Southern District of California, Central Division. (R-3).

The Defendants, respondents, moved to dismiss the petitioner complaint on the grounds that the Court lacked jurisdiction over the subject matter of the cause of action, and that the complaint, and each cause of action therein, failed to state a claim against Defendants upon which relief could be granted. (R-25-29).

The District Court granted the Defendants motion and dismissed the Plaintiff, petitioners, action on November 27, 1951. (R-47) On December 12, 1951 Plaintiff, petitioner, filed notice of appeal to the United States Court of Appeals for the Ninth Circuit from the order of dismissal of the District Court. (R-50) On December 12, 1952, the Court of Appeals affirmed the order of the District Court dismissing petitioners action. (R-63).

II.

JURISDICTIONAL STATEMENT

(a) Statutes Giving Jurisdiction

Plaintiff asserts that the Defendants are in violation of the Anti-Trust Statutes.

Sherman Act, 26 Stat. 209 Par 1, 15 U.S.C.A. sec 1,

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: . . ."

and

Sherman Act, 26 Stat. 209 Section 2, 15 U.S.C.A. Section 2,

"Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations shall be deemed guilty of a misdemeanor . . ."

By reason of the said activities of the Defendants the Plaintiff has been injured in his business and therefore brings this action for treble damages under section 4 of the Clayton Act., 38 Stat. 731 Section 4, 15 U.S.C.A. Section 15.

"Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the Defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee."

The District Court on Defendant's motion, dismissed plaintiff, petitioners, action on the grounds it lacked jurisdiction of the subject matter of the complaint and on the further grounds that the Complaint does not, nor does any cause of action therein set forth, state a claim upon which relief can be granted.

By virtue of the statute Title 28 U.S.C.A. 1291 plaintiff, petitioner, appealed the final order of dismissal of the District Court to the United States Court of Appeals for the Ninth Circuit. On December 12, 1952, the United States Court of Appeals for the Ninth Circuit affirmed

the order of dismissal and the said order was entered that day.

The Jurisdiction of the United States Supreme Court to review the matter on certiorari is invoked under statute title 28, U.S.C.A., Sections 1254 and 2101(c).

In this case the United States Court of Appeals for the Ninth Circuit has rendered a decision in conflict with the decision of the United States Court of Appeals for the Second Circuit on the same matter. (Supreme Court Rule 38, par. (5) (b)). In the case of Gardella vs. Chandler 172 Fed 2nd 402, the United States Court of Appeals for the Second Circuit held that organized professional baseball was engaged in interstate commerce and subject to the Federal Anti-Trust Acts. In this case the United States Court of Appeals for the Ninth Circuit in affirming the order of dismissal of the District Court has held that organized professional baseball is sport, not trade, and that the business of giving exhibitions of baseball are purely State affairs and not subject to Federal Anti-Trust Laws.

In this case the United States Court of Appeals for the Ninth Circuit has decided a federal question in a way probably in conflict with the applicable decisions of this Court. Some 30 years ago this Court decided in Federal Baseball Club of Baltimore vs. National League of Professional Baseball Clubs, 259 U.S. 200, that professional baseball, or the business of giving exhibitions of baseball are purely State affairs and that any interstate activity is a mere incident not the essential thing—and therefore professional baseball was not subject to the Federal Anti-Trust Laws. Recent decisions of this Court interpreting the scope of the commerce Clause in the Federal Consti-

tution show that that case is no longer the law and was erroneously decided on its facts. (United States vs. South Eastern Underwriters Association 322 U.S. 533).

Regardless of the validity of that decision rendered on May 29, 1922, modern technological developments in the last 25 years such as radio and television have so changed the role of professional baseball in its business of giving exhibitions of baseball that the decision is no longer applicable to professional baseball. The positive authority of a decision is coextensive only with the facts on which it is made. (Ogden vs. Saunders, 12 U.S. (Wheat) 213). Thus following the case of Federal Baseball Club vs. National League (Supra) without distinction as to facts gives a decision in conflict with the present applicable decisions of this court.

III.

THE QUESTIONS PRESENTED

Only one question is presented by this petition. That is whether the United States District Court has jurisdiction of the subject matter of this action. In direct application are the activities and organization of professional baseball as set forth in plaintiffs, petitioners, complaint subject to the Federal Anti-Trust Laws.

IV.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT

(1) In this case the United States Court of Appeals for the Ninth Circuit has rendered a decision which is in conflict with the decision of the United States Court of Appeals for the Second Circuit. (Gardella vs. Chandler 172 Fed. 2nd 402).

(2) In this case the United States Court of Appeals for the Ninth Circuit has decided the question of the scope of the commerce Clause in a way probably in conflict with the applicable decisions of this Court.

(3) The Congress of the United States believes that organized professional baseball is not beyond the Federal jurisdiction. This belief is in conflict with the decision of the United States Court of Appeals for the Ninth Circuit in the case at bar. On page seven of the report of the Sub-Committee on Study of Monopoly power of the Committee on The Judiciary House of Representatives Eighty-Second Congress Second Session, it is stated "After a full review of all of the foregoing facts and with due consideration of modern judicial interpretation of the scope of the commerce clause, it is the studied judgment of the Sub-committee on the Study of Monopoly Power that the Congress has jurisdiction to investigate and legislate on the subject of professional baseball."

(4) Baseball is America's national pastime. On July 31, 1951 the Sub-committee on the Study of Monopoly Power knew of eight treble damages actions against various representatives of organized baseball seeking damages totaling several million dollars. Those in control of professional baseball assert that the great American pastime cannot continue should any of these actions be successful. Many of these same suits are pending in the lower federal courts and at least one is on appeal in the Sixth Circuit. The importance of the question presented in this case is so great to the American people as to require an explicit decision on the matter from this Court.

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this court, directed to the United States Court of Appeals for the Ninth Circuit, commanding said Court to certify and send to this court a full and complete transcript of the record and of the proceedings of the said United States Court of Appeals for the Ninth Circuit had in the case numbered and entitled on its docket, No. 13228, George Earl Toolson, Appellant vs. New York Yankees, Inc., a corporation, et al., Appellates, to the end that this cause may be reviewed and determined by this court as provided for by the statutes of the United States; and that the judgment herein of said United States Court of Appeals for the Ninth Circuit be reversed by the court, and for such further relief as to this Court may seem proper.

Dated: 27 February, 1953.

GENE M. HARRIS
Counsel for Petitioner

IN THE

Supreme Court of the United States

October Term, 1952

No.....

GEORGE EARL TOOLSON, *Petitioner*

vs.

NEW YORK YANKEES, INC., *et al, Respondents*

BRIEF IN SUPPORT OF PETITION

I.

Opinions and Judgments in the Courts Below

The Opinion of the District Court was filed November 6, 1951 (R-41-46), 101 Fed. Supp. 93.

The Judgment of The District Court was entered November 28, 1951 (R-47-50).

The Opinion of the Court of Appeals for the Ninth Circuit was filed December 12, 1952. (R-62) 200 Fed. 2nd 198.

The Judgement of the Court of Appeals was entered December 12, 1952. (R-63).

II.

Statutory Provisions Sustaining Jurisdiction

This action is a statutory action filed in the United States District Court by virtue of the Sherman Act, 26 Statute 209 paragraphs 1 and 2, 15 U.S.C.A. 1 and 2, and

the Clayton Act.,38 Statute 731 paragraph 4, 15 U.S.C.A. 15.

Appeal from the order of dismissal by the United States District Court was had to the United States Court of Appeals by virtue of Title 28 U.S.C.A. 1291.

The jurisdiction of this Court is invoked under Title 28 U.S.C.A. 1254 (1) and 2101 (c).

III.

Statement of the Case

This has already been stated in the preceeding petition under I (pp. 1), which is hereby adopted and made a part of this brief.

IV.

Specification of Errors

The only error urged in this matter is that the District Court and Court of Appeals are in error in holding that the District Court does not have jurisdiction of the subject matter of this action.

V.

ARGUMENT

(a) SUMMARY OF ARGUMENT:

(b) (1) The decision in the case at bar by the Court of Appeals for the Ninth Circuit is in conflict with the decision of the Court of Appeals for the Second Circuit on the same matter. (*Gardella vs. Chandler*, 172 Fed. 2d 402 (2d Cir.)

(2) There is confusion and doubt in the lower courts on this subject and a definite declaration of the law from this Court is needed.

(c) The Court of Appeals for the Ninth Circuit in the case at bar followed without distinction as to fact or progress the decision in *Federal Baseball Club vs. National League*, 259 U.S. 200. That case is no longer binding or applicable and thus the Court of Appeals decided this case in a manner in conflict with the applicable decision of this Court.

(d) The question presented here requires review by this Court since the question is of National importance far beyond the immediate litigants.

(1) Congressional Committees have investigated the question and have decided in opposition to the Court of Appeals for the Ninth Circuit that baseball is within Federal jurisdiction.

(2) Baseball is America's national pastime. Baseball's authorities say the very existence of this national pastime is threatened by the question presented here.

(b) THE DECISION OF THE NINTH CIRCUIT IS IN CONFLICT WITH THE DECISION OF THE SECOND CIRCUIT.

(1) The case of Gardella vs. Chandler, 172 Fed. 2nd 402, was decided February 9, 1949 by the United States Court of Appeals for the Second Circuit. The subject matter of that case is almost identical with that of the case at bar. The suit was by the Plaintiff, Gardella, a professional baseball player, for treble damages under the Federal Anti-Trust Acts against various baseball clubs and officials of organized baseball. The Plaintiff had appealed from a judgment of the district court dis-

missing the complaint for lack of jurisdiction. (79 Fed Supp 260). Each of the three Judges of the Court of Appeals wrote an opinion. Judge Chase felt bound by the case Federal Baseball Club vs. National League, 259 U.S. 200, and would affirm the judgment of dismissal for want of jurisdiction. Judge Learned Hand and Judge Frank, although writing separate opinions, both held that with the advent of radio and television and the relation of baseball to those media such a change had been made as to make the Federal Baseball Case (Supra) no longer applicable to professional baseball. Both Judge Hand and Judge Frank held that organized professional baseball was engaged in interstate commerce and subject to the Federal Anti-Trust Laws. Thus the Court of Appeals held the district court did have jurisdiction and reversed the judgment of dismissal.

In the case at bar the district court followed the Federal Baseball Club Case (Supra) without distinction as to facts and ordered the action dismissed for lack of jurisdiction of the subject matter. The United States Court of Appeals for the Ninth Circuit affirmed this order of dismissal on the grounds as stated in the opinion of the district court. That decision, although noting the radio and television aspects of the modern problem, held the court was bound by the Federal Baseball Club case (Supra) and that if any changes were to be made they must be made by the Supreme Court. The decisions of the second and ninth Circuits are in clear and direct conflict. This conflict is not as to the present validity of the Federal Baseball Club case (Supra) on its particular facts, but is a conflict as to present applicability of that decision to the modern professional baseball organiza-

tion, which organization receives in excess of 10.5% of its gross revenues from radio and television exhibitions of its games. That conflict must be resolved by the Supreme Court.

(2) There is no doubt that the judicial mind is presently confused on this subject and requires a definite declaration of the law from the Supreme Court.

The district court in the case at bar held that Federal Courts had no jurisdiction of the subject matter since there was no interstate commerce involved. Yet in the same opinion (R-46) the court stated that it was common knowledge baseball was the subject of a congressional hearing and Congress might pass legislation determinitive of the issue before the Court. If professional baseball is outside the jurisdiction of Federal power it seems odd still to hold that the Congress has jurisdiction to make legislation concerning baseball, unless that legislation were merely to declare that its laws specifically were not to cover this activity which is beyond the jurisdiction of the laws of Congress anyway!

Again judicial doubt as to the present position of organized professional baseball in interstate commerce and the present applicability of the Federal Baseball Club case (Supra) is shown in the opinion in the case Niemic vs. Seattle Rainier Baseball Club, 67 Fed Supp 705, wherein discussing the Federal Baseball Club case decision the court states, "The decision holds, and very properly, that professional baseball is not trade or commerce in the commonly accepted use of those words; and if my recollection serves me correctly, in 1922 the Supreme Court said that life insurance or insurance was

not interstate commerce and not subject to the Anti-Trust Act. Professional baseball should not be too certain that some of the recent decisions by the United States Supreme Court would not be the basis for a reexamination of the interstate character of National League professional baseball." This doubting and questioning must be resolved by the Supreme Court.

(c) THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT HAS DECIDED THE QUESTION AT BAR IN A WAY IN CONFLICT WITH THE APPLICABLE DECISIONS OF THIS COURT.

(1) The Federal Baseball Club case (supra) was wrongly decided and cannot be binding in this case.

In 1922 the Supreme Court held, in Federal Baseball Club vs. National League of Baseball Clubs (supra), that baseball was sport not trade and that the incidental crossing of state lines did not alter the state character of the business of baseball. The Federal Baseball Case decision relied heavily on the rationale and decisions in Hooper vs. California, 155 U.S. 648, and Paul vs. Virginia, 8 U.S. 168, where state statutes controlling the business of insurance were upheld since insurance was held not to be commerce under Article I Section 8 of the Federal Constitution and thus not subject to exclusive federal control.

In 1944 this Court in the case United States vs. South Eastern Underwriters Association, 322 U.S. 533, held that the commerce clause did grant to Congress the power to regulate insurance transactions stretching across state lines. In so doing the Court stated at Page 544:

"In all cases in which the Court has relied upon the proposition that 'the business of insurance is not commerce,' its attention was focused on the validity of state statutes—the extent to which the Commerce Clause automatically deprived states of the power to regulate the insurance business. Since Congress had at no time attempted to control the insurance business, invalidation of the state statutes would practically have been equivalent to granting insurance companies engaged in interstate activities a blanket license to operate without legal restraint. As early as 1866 the insurance trade, though still in its infancy was subject to widespread abuses. To meet the imperative need for correction of these abuses the various state legislatures, including that of Virginia, passed regulatory legislation. *Paul v. Virginia* upheld one of Virginia's statutes. To uphold insurance laws of other states, including tax laws, *Paul v. Virginia's* generalization and reasoning have been consistently adhered to.

"Today, however, we are asked to apply this reasoning, not to uphold another state law, but to strike down an Act of Congress which was intended to regulate certain aspects of the methods by which interstate insurance companies do business; and, in so doing, to narrow the scope of the federal power to regulate the activities of a great business carried on back and forth across state lines. But past decisions of this Court emphasize that legal formulae devised to uphold state power cannot uncritically be accepted as trustworthy guides to determine Congressional power under the Commerce Clause."

The Supreme Court in the Federal Baseball Club Case (supra) in 1922 applied the rationale and guides developed in the *Paul v. Virginia* (supra) and *Hooper v. California* (supra) cases—not to sustain a state statute—but to strike down the applicability of an act of Congress. It did then exactly what this Court refused to do in the *United States v. South Eastern Underwriters* Case (supra). Applying the formula of what is the federal power, not the formula for what is the state power, gives an entirely different result in the Federal Baseball Club case (supra).

(2) There can be no argument that the Supreme Court in such recent decisions as *United States vs. South Eastern Underwriters Association*, 322 U.S. 533 (1944), *North American Co. vs. Securities and Exchange Commission*, 327 U.S. 686 (1946), *Associated Press vs. National Labor Relations Board*, 301 U.S. 103 (1937), and *Associated Press vs. United States*, 326 U.S. 1 (1945) has increased the scope of the commerce clause from the construction that was given it in 1922 and 1894. Again the Federal Baseball Club case (supra) is not the law and to follow that decision and to ignore those listed above is to decide the question in a way in conflict with the applicable decisions of this Court.

(3) Even if the Federal Baseball Club Case (supra) were correctly decided on its facts it is not applicable to the present day situation and facts. In 1929 baseball received no revenue from radio or television exhibition of its games. In 1922 and still in 1929 the audience for a baseball game was in the ball park stadium. Today, however, the revenue from radio and television exceeds 10.5%

of the gross revenues of baseball. The audience of major games is numbered in the hundreds of thousands or millions and is distributed over all of the 48 states. The revenue to baseball from radio and television for the 1951 World Series alone was $1,075,000—and the 1952 World Series were televised across the whole nation to millions of people. Such exhibitions require the complete facilities of one or more of our great communications networks. To hold that such activities are beyond the scope of the commerce clause, beyond the federal power is patently absurd. Baseball is sport but it is also trade and it so effects interstate commerce as to be within the scope of the Federal Anti-Trust Statutes. (*Mandeville Island Farms, Inc. vs. American Crystal Sugar Co.* 334 U.S. 219 (1946). The decision of the Court of Appeals for the Ninth Circuit exempting professional baseball from the scope of the Federal Anti-Trust Acts is clearly in conflict with the applicable decisions of this Court.

(d) THE QUESTION PRESENTED BY THIS PETITION IS OF URGENT IMPORTANCE BEYOND THE MERE LITIGANTS IN THE CASE AT BAR.

(1) The question of the relationship between organized professional sports enterprises and the Federal Anti-Trust Laws became of such national concern that four bills regarding the same were introduced in the 82nd Congress. After a full review of the matter the House of Representatives Sub-committee on the Study of Monopoly Power gave its opinion that Congress has jurisdiction to investigate and legislate on the subject of professional baseball. In other words, *Congress* believes that professional baseball is within the Federal jurisdiction.

(2) Baseball is America's national pastime. On July 31, 1951 the Sub-committee on the Study of Monopoly Power knew of eight separate treble damages actions against various representatives of organized baseball seeking damages totaling several million dollars. Those in control of professional baseball state that the very existence of the great American pastime is threatened by these suits. They assert baseball cannot exist without its "reserve clause." Many of these same suits are pending in the lower federal courts. The importance of the question presented in this case is so great to the American People as to require an explicit decision on the matter from this Court.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, by granting a writ of certiorari and thereafter reviewing and reversing said decision in this case.

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